

Enclosure C
Special Conditions

1. Basis for Requiring Special Conditions

Pursuant to IDEA section 616(g) and 34 CFR §80.12, the Office of Special Education Programs (OSEP) is designating Virgin Islands as a “high risk” grantee and imposing Special Conditions on Virgin Islands’ Federal Fiscal Year (FFY) 2010 grant award under Part B of the Individuals with Disabilities Education Act (Part B), related to the Virgin Island’s failure to demonstrate that previously identified noncompliance has been fully corrected and failure to fully meet the terms of the FFY 2009 Special Conditions. The FFY 2009 programmatic Special Conditions attached to the Part B grant award required the Virgin Islands Department of Education (VIDE) to:

- A. Demonstrate compliance with the requirement that all eligible students transitioning from Part C to Part B have timely individualized education programs (IEPs) or individualized family service plans (IFSPs) and are receiving special education and related services by their third birthday, including those eligible children who turn three during the summer months, consistent with Part B requirements;
- B. Ensure that all children with disabilities are included in general State (Territory) and districtwide assessment programs, including the provision of appropriate accommodations and alternate assessments, as appropriate, and that the VIDE is reporting to the public on the participation of children with disabilities in the assessment program consistent with Part B requirements; and
- C. Ensure that the St. Thomas/St. John district is complying with the requirements of 20 U.S.C. §1412(a)(16) and 34 CFR §300.160(f) that apply to districtwide assessments.

Status of Compliance: VIDE submitted documentation on February 1, 2010, April 7, 2010, May 14, 2010, and June 10, 2010. OSEP’s analysis of VIDE’s submissions related to the FFY 2009 Special Conditions follows:

- A. Students Transitioning from Part C to Part B: Under 20 U.S.C. §1412(a)(9) and 34 CFR §300.124, a child transitioning from services under Part C of the IDEA to services under Part B, must have an IEP developed and implemented by the child’s third birthday. In addition to reporting under Indicator 12 in the Annual Performance Report (APR), OSEP required VIDE to demonstrate compliance with the Part C to Part B transition requirements by submitting updated data and information on May 15, 2010, for the period from April 1, 2009 to March 30, 2010.

On May 14, 2010, VIDE submitted a report on children with disabilities transitioning from Part C to Part B for the relevant period. OSEP calculated VIDE’s compliance rate consistent with the formula required under the Annual Performance Report (APR) for Indicator 12, and determined that VIDE reported 100% compliance for the period from April 1, 2009 to March 30, 2010.

Therefore, OSEP concludes that VIDE has demonstrated compliance with the requirements of 34 CFR §300.124.

- B. Statewide (Territory-wide) Assessments: Under 20 U.S.C. §1412(a)(16) and 34 CFR §300.160(f) the VIDE is required to report publicly and to the Secretary, on the participation of children with disabilities on Statewide (Territory-wide) assessments with and without accommodations and on alternate assessments, as appropriate, based on alternate grade-level achievement standards, and/or alternate achievement standards with the same frequency and in the same detail as it reports on the assessment of nondisabled children. In its FFY 2008 APR, VIDE reported that the Territory-wide assessment is publicly reported on its website. In addition, VIDE also reported that an addendum to the FFY 2007 Territorial Report Card had been posted on its website. Based on OSEP's review of the VIDE website regarding Territory-wide assessments for FFY 2008-2009, VIDE did not disaggregate or report the number of students with disabilities who took the regular assessment with and without accommodations and the alternate assessment consistent with the requirements of 34 CFR §300.160(f).

In addition, OSEP's review of VIDE's submission of documentation, the VITAL-A Educator Resource Guide and a memorandum to the Deputy Commissioner of Curriculum and Assessment with language to be included into the revised Test Administration Manual, indicated that it did not address all the requirements of 34 CFR §300.160, including subparagraphs (d) and (e).

- C. Districtwide Assessments: Under 20 U.S.C. §1412(a)(16) and 34 CFR §300.160, the same requirements that apply to statewide assessments also apply to assessments administered and reported on a districtwide basis. As required under 34 CFR §300.160(f), in the case of districtwide assessments, a local educational agency (LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children. On June 10, 2010, VIDE submitted a memorandum stating that the St. Thomas/St. John school district does not report on the assessment of nondisabled students on its website. However, it is the districtwide use of an assessment that triggers the IDEA's requirements and not reporting on a website. VIDE did not indicate that the assessment is not administered districtwide or reported to parents. In addition, the document submissions referenced above did not demonstrate compliance for districtwide assessments. Therefore, VIDE has not demonstrated compliance with the requirements of 34 CFR §300.160 for districtwide assessments by the St. Thomas/St. John school district.

2. Nature of the Special Conditions

- A. With the Annual Performance Report, due February 1, 2011, VIDE must submit appropriate policies and procedures, that may include the revised Test Administration Manual that fully addresses the requirements of 20 U.S.C. §1412(a)(16) and 34 CFR §300.160.
- B. By May 1, 2011, VIDE must submit documentation and information that the State is reporting publicly and to the Secretary consistent with the standards in 20 U.S.C. §1412(a)(16) and 34 CFR §300.160, including, with the same frequency

- and in the same detail as it reports on the assessment of nondisabled children, the number of children with disabilities participating on Statewide (Territory-wide) assessments with accommodations; the numbers of children with disabilities participating without accommodations; and numbers of children with disabilities participating in the alternate assessment(s).
- C. By May 1, 2011, VIDE must submit documentation and information that the St. Thomas/St. John school district is complying with the requirements of 20 U.S.C. §1412(a)(16) and 34 CFR §300.160 to the extent that the school district is administering a standardized assessment on a districtwide basis.
 - D. OSEP also notes that the Department has continued to designate VIDE as a high-risk grantee and has imposed Department-wide Special Conditions on its grants for FFY 2010 (Enclosure D). The Special Conditions require a contract with a third-party fiduciary to address financial management responsibilities concerning the grants, including, but not limited to, processing of payments and disbursements, maintaining financial records, financial reporting, property procurements, and other related financial issues. These IDEA-specific Special Conditions are in addition to, and are not intended to supersede or modify the Department-wide Special Conditions related to financial management responsibilities.

3. Evidence Necessary for Conditions To Be Removed

The Department will remove the Special Conditions if, at any time prior to the expiration of the grant year, Virgin Islands provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require Virgin Islands to submit data demonstrating compliance with 20 U.S.C. §1412(a)(16); and 34 CFR § 300.160 that are the same subject of the Special Conditions under Part B.

4. Method of Requesting Reconsideration

The State can write to OSEP's Acting Director, Dr. Alexa Posny, at the address below, if it wishes the Department to reconsider any aspect of these Special Conditions. The request must describe in detail the changes to the Special Conditions sought by the State and the reasons for those requested changes.

5. Submission of Reports

All reports that are required to be submitted by Virgin Islands to the Department under the Special Conditions should be submitted to:

U.S. Department of Education
Office of Special Education and Rehabilitative Services
Attn: Christine pilgrim
400 Maryland Ave., SW
Washington, DC 20202-2550